

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

HONORABLE PAUL D. BORMAN

v.

No. 13-20243

D-1 ANDREW PARTYKA,

Defendant.

MOTION TO WITHDRAW AS COUNSEL/SENTENCING

Friday, January 24, 2014

9:00 a.m.

APPEARANCES:

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MOTION TO WITHDRAW AS COUNSEL

January 24, 2014

Detroit, Michigan

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(Call to order of the Court, 9:00 a.m.)

(Court, Counsel and Defendant present.)

THE COURT CLERK: Now calling the case of the *United States of America versus Andrew Partyka*, Case Number 13-20243.

THE COURT: Okay. Parties please identify themselves for the record beginning with the government.

MS. OBERG: Good morning, Your Honor. Cynthia Oberg appearing on behalf of the United States.

THE COURT: And seated with you at counsel table for the record, please.

MS. OBERG: Is Special Agent Christine Taylor from the FBI.

THE COURT: Okay. Good morning.

Okay. And for Defendant, please.

MR. FISHMAN: Steven Fishman, for now, on behalf of Mr. Partyka, and he's sitting at the table.

THE COURT: Okay. And good morning, Mr. Partyka.

THE DEFENDANT: Good morning, Your Honor.

THE COURT: Okay. Have a seat for a minute. Let me just...

Mr. Fishman, why don't you and Mr. Partyka come to the podium. Ms. Oberg, why don't you go side bar and let's

MOTION TO WITHDRAW AS COUNSEL

1 begin -- you can come up to the podium, sir, with the motion to
2 withdraw as counsel.

3 Have you all had any further conversations since the
4 motion was filed?

5 MR. FISHMAN: We've -- not about continuing on the
6 case. We've had a little bit of e-mailing, just Mr. Partyka
7 asking me certain procedural questions. For instance, I had to
8 e-mail him, tell him it was adjourned from yesterday afternoon,
9 but we haven't changed our position.

10 THE COURT: Okay. I received Mr. Partyka's sentencing
11 memorandum. The government got a copy?

12 MS. OBERG: Yes, we did.

13 MR. FISHMAN: I should say that, Judge, I did that as
14 well. I think either Ms. Oberg -- somebody asked me to file it
15 on the ECF system, so I had them send it to me and everybody
16 should have a copy. It's part of the system. It wasn't my
17 memo, but I filed it out of the courtesy for everybody.

18 THE COURT: Okay. So at any rate, we do have that.

19 Let me ask you, Mr. Partyka, Mr. Fishman has been your
20 counsel up till now, and I think you're very aware that he's an
21 excellent lawyer and very knowledgeable about the law and this
22 courthouse. Is it your desire to proceed to have him withdraw
23 and to proceed by yourself without an attorney?

24 THE DEFENDANT: Yes, Your Honor, for sentence.

25 THE COURT: Okay. Let me explain some things that are

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1 required with regard to someone who wants to represent himself.
2 You have a constitutional right to self-representation, but I
3 want to make clear that you're aware of the hazards and
4 disadvantages of self-representation.

5 Have you ever studied law?

6 THE DEFENDANT: No, sir. But I'm aware of the fool-
7 for-a-client quote.

8 THE COURT: A what? You know, that's a maxim or -- I
9 guess the point is this: The law is complicated with regard to
10 sentencing. Your sentencing memorandum indicates an
11 understanding of some aspects of the sentencing guidelines, in
12 particular, the amounts of loss and how that factors into the
13 guideline range, and you wrote about it very well. But at the
14 same time if you represent yourself, you're on your own. I
15 cannot advise you on the law. You understand that?

16 THE DEFENDANT: I understand, Your Honor.

17 THE COURT: Okay. And I must advise you, in my
18 opinion, a trained lawyer would represent you, in particular,
19 Mr. Fishman, who's an excellent lawyer, better than you could
20 defend yourself, and I think it is unwise for you to represent
21 yourself. At a sentencing you're entitled to allocution which
22 is a fancy way of saying to speak. But you're not familiar
23 with the law, and Mr. Fishman could highlight, if you wanted
24 him to, the legal -- some of the legal issues relating to
25 sentencing guidelines, departures, variances and other matters

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1 like that. You understand that?

2 THE DEFENDANT: Yes, Your Honor.

3 THE COURT: Okay. In light of the difficulties of
4 representing yourself, do you still desire to represent
5 yourself and give up your right to be represented by a lawyer?

6 THE DEFENDANT: Yes, Your Honor.

7 THE COURT: Okay. Is your decision entirely
8 voluntary?

9 THE DEFENDANT: Yes, Your Honor.

10 THE COURT: Is there anything that you want to state,
11 Mr. Fishman?

12 MR. FISHMAN: No. I laid everything out for the Court
13 in the motion. I tried to be as detailed as possible.

14 THE COURT: Right.

15 MR. FISHMAN: And I should tell you, Mr. Partyka asked
16 me certain questions today about just the procedure. I advised
17 him as to how the sentencing hearing goes on, so I think he's
18 fully capable of doing it.

19 THE COURT: Okay. I find that Mr. Partyka has
20 knowingly and voluntarily waived the right to counsel. I'll
21 permit him to represent himself.

22 Let me ask a question and, again, I can't force
23 anything. Do you want Mr. Fishman to sit at the table during
24 the sentencing in any way to be there if you have a question?

25 THE DEFENDANT: He doesn't want to, so no, Your Honor.

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1 THE COURT: Okay. Well, I think generally it's a
2 conflicting situation and once he's removed, he's removed.

3 THE DEFENDANT: Right. I agree.

4 THE COURT: Okay. You agree to that.

5 Okay. Then, Mr. Fishman, I will remove you.

6 I believe that the record -- let me just ask, Miss
7 Oberg, are there any voir dire questions with regard to the
8 self-representation that you want to ask the Defendant.

9 MS. OBERG: No, Your Honor. Thank you.

10 THE COURT: Okay. Very good.

11 Thank you, Mr. Fishman.

12 THE DEFENDANT: Thank you.

13 Thank you, Your Honor.

14 THE COURT: Then let me proceed then with the
15 sentencing.

16 Miss Oberg, did you receive a copy of the Defendant,
17 Mr. Partyka's sentencing memorandum?

18 MS. OBERG: Yes, I did.

19 THE COURT: Okay. And, Mr. Partyka, did you receive a
20 copy of the government's sentencing memorandum?

21 THE DEFENDANT: Yes, Your Honor.

22 (Whereupon Mr. Fishman exited the courtroom)

23 THE COURT: Okay. Very good. Then let me ask, as
24 part of the sentencing, under the Victim Witness Protection
25 Act, individuals are entitled to speak, if they wish to, and,

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1 Miss Oberg, are there any victims that are here, present, that
2 wish to speak?

3 MS. OBERG: Your Honor, Keith Hammer is here
4 representing, if the Court permits it, his daughter, Jennifer
5 Harris, who is a victim. She's in Texas. He also has brought
6 a letter from her that we just received today, and he's also
7 speaking -- or asking to speak on behalf of Shane Daniel,
8 another victim, who I believe is also in Texas who could not be
9 here today.

10 THE COURT: Well, I will allow him to speak on behalf
11 of his daughter. I will not allow him to speak on behalf of
12 another victim who is not here.

13 Do you have copies of those letters?

14 MS. OBERG: Mr. Hammer brought them this morning, and
15 I do have copies.

16 THE COURT: Okay. If you'd give one to Mr. Partyka
17 and one to Mrs. Tofil for me, and I don't know if you have a
18 third copy. If not, we can make one after for the probation
19 officer.

20 MS. OBERG: Thank you.

21 THE COURT: Just for the record, would the probation
22 officer identify himself.

23 MR. ELY: Yes, Your Honor. Steve Ely, last name is
24 E-L-Y, on behalf of the probation department.

25 THE COURT: Very good.

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1 So if the individual would come up, forward, to the
2 podium and speak and identify and spell your first name and
3 last name to help Ms. Lizza and, most importantly, speak slowly
4 because Ms. Lizza has to take down every word. Okay?

5 MR. HAMMER: Shall do.

6 THE COURT: Okay. And your name, sir, is Keith
7 Hammer?

8 MR. HAMMER: Yes, it is.

9 THE COURT: Spelled?

10 MR. HAMMER: K-E-I-T-H.

11 THE COURT: Okay.

12 MR. HAMMER: The last name, Hammer, H-A-M-M-E-R.

13 THE COURT: Thank you. Please proceed.

14 MR. HAMMER: Okay. Thank you.

15 Thank you, Your Honor.

16 First, let me take the opportunity to be here --

17 THE COURT: See, when people read, they read real
18 fast.

19 MR. HAMMER: Oh.

20 THE COURT: Ms. Lizza has to take down every word.

21 Let's do it like this cadence like I am doing, talking right
22 now.

23 MR. HAMMER: Shall do.

24 First, let me thank you for the opportunity to be here
25 today to address the Court and Andrew, in particular. I'm here

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1 today representing my daughter, Jennifer Harris, her husband,
2 Scott Harris, and their two children, my grandchildren, Chloe
3 and Colton Harris, ages four and 18 months.

4 Both my daughter and her husband are hard-working and
5 upstanding people. They both work long hours and honest jobs
6 while raising a family so that they can provide shelter, put
7 food on the table, save for college and save for the inevitable
8 rainy day.

9 In addition, they are people of high integrity which
10 makes today hurt that much more. Scott and Jennifer love their
11 family and are always there to help their friends and others in
12 their community. In stark contrast, the Defendant, Andrew
13 Partyka, sits here today before this Court and his victims a
14 convicted felon. Andrew is now an admitted liar, thief and a
15 person absent of integrity and without a conscious (sic).
16 While no crime is excusable, most will agree that sometimes
17 there are mitigating circumstances that lead good and even
18 desperate people to do bad things. Andrew's crimes have no
19 such mitigating circumstances.

20 Andrew did not steal to save his home. Andrew did not
21 steal because he was hungry and starving. Andrew did not steal
22 to cover medical expenses to save a loved one. No, Andrew
23 stole so that he could live the high life and purchase luxury
24 items while frequently traveling the world in style. We
25 watched as Andrew purchased and flaunted expensive jewelry and

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1 other luxury items, known and unknown.

2 While traveling, Andrew was even bold enough to share
3 his pictures with friends and family, or should I say victims,
4 documenting those high times, from exotic locations around the
5 world. Andrew was raised in privilege, was provided with
6 opportunity and in the end made a conscious decision to make an
7 illegal living by preying on family, friends and acquaintances.

8 When you ask why Andrew would take this route, I
9 believe there are a few words to answer this question. Greed,
10 laziness and a total lack of compassion for anyone.

11 My daughter and her husband welcomed Andrew into their
12 home on several occasions, and unfortunately, Andrew benefited
13 from my wife and my hospitality in our home as well. Over the
14 past year, as Andrew's lies and criminal enterprise imploded,
15 Andrew's victims now know that they never really knew him.
16 Everything about Andrew is a lie and part of a well planned
17 effort to steal money from anyone that he could. Not only did
18 Andrew lie and deceive family, friends and acquaintances to get
19 their money, the lies became more bold and outrageous in an
20 effort to avoid being caught. Andrew stole from family,
21 friends and, worst of all, active military personnel. He stole
22 from the very people that put their life on the line daily to
23 protect him.

24 Further, my daughter was recovering from thyroid
25 cancer when my daughter and my husband first gave Andrew their

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1 hard-earned money to invest. When accepting this money, Andrew
2 knew my daughter was recovering from cancer, and later Andrew
3 even told his victims that he had brain cancer and was in the
4 hospital for lifesaving surgery as things began to unravel.

5 Andrew took money from people that my son-in-law
6 worked with potentially jeopardizing his employment. Yes,
7 Andrew is personally a person without integrity and without a
8 conscious (sic).

9 My daughter and son-in-law cannot be here today
10 because they decided to spend their money on air fare to come
11 home from Texas for Christmas and are now both working and
12 cannot afford the air fare to be here today. However, they
13 wanted me to make clear to this Court just how much Andrew has
14 hurt them and his other victims, both financially and
15 emotionally.

16 I hope that I have done so on their behalf.

17 In closing, let me say that while Andrew may not have
18 entered a party store or a bank to steal money, he entered our
19 homes to steal our money. The unfortunate truth is that we
20 will never know the true negative impact that Andrew's crimes
21 have had on his victims. Lives may be changed forever due to
22 lack of financial resources and opportunities lost. People who
23 steal from party stores or banks often steal much less money
24 and are sitting in prison today for -- with very long prison
25 sentences. While -- why should Andrew's crime be treated any

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1 less harshly?

2 We ask Your Honor and this Court to sentence Andrew to
3 the maximum sentence provided by the law and to a prison where
4 he will pay for his crimes.

5 Thank you, Scott and Jennifer Harris.

6 THE COURT: Thank you, sir.

7 MR. HAMMER: Thank you, Your Honor.

8 THE COURT: Okay. Any others under the victim witness
9 protection?

10 MS. OBERG: Your Honor, Mr. John McIntyre, who is a
11 victim, is present in court. He's indicated he doesn't wish to
12 speak to the Court but he did want to attend the sentencing.

13 THE COURT: Okay. Very good. Thank you, sir.

14 Okay. At this time, Mr. Partyka, why don't you come
15 to the podium. Miss Oberg, why don't you go side bar. And
16 we'll proceed.

17 In your memorandum you are challenging, as you pointed
18 out already, the guideline range as contained in the
19 presentence report. Specifically, the amount of fraud loss in
20 the presentence report is between \$400,000 and a million
21 dollars. Is that correct, Mr. Ely?

22 MR. ELY: Yes, Your Honor.

23 THE COURT: And you believe that the amount should be
24 between 200 and \$400,000 which would give you a two-level
25 reduction under the base offense level; is that correct?

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1 THE DEFENDANT: Yes, Your Honor. I have -- this is --
2 if I may approach, this is the list the government provided my
3 then counsel in November with the loss.

4 THE COURT: Right. I think it's attached to --

5 THE DEFENDANT: Attachment A, I believe.

6 THE COURT: Let me just check.

7 MS. OBERG: It is. It's Attachment A -- the document
8 that Mr. Partyka has is one that was a working copy.

9 THE COURT: Right.

10 MS. OBERG: Submitted in November. The one that the
11 Court has is the final copy filed in January.

12 THE COURT: Okay. Let me just -- as I have gone over
13 and added it up, Mr. Ely, neither of us are math Ph.D.s, but we
14 get a figure of loss of \$363,308. Is that correct, Mr. Ely?

15 MR. ELY: Yes, Your Honor.

16 THE COURT: And is that the number, in terms of adding
17 up with regard to the loss, restitution amount?

18 THE DEFENDANT: I come up with a range, Your Honor, of
19 338,708 to either three seventy-four zero eight.

20 THE COURT: Okay.

21 THE DEFENDANT: But for the purpose -- that's
22 restitution as a separate issue. But the loss amounts, I
23 guess, then would be below 400,000, correct?

24 THE COURT: Right.

25 Do you wish to speak with regard to that, Miss Oberg?

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1 MS. OBERG: Your Honor, I submit that the loss amount
2 may be below 400 if we don't include the individuals who have,
3 since they first were contacted by the FBI, decided that the
4 money that they gave Mr. Partyka was, in fact, a loan rather
5 than an investment, for reasons that I don't begin to
6 understand, but the fraud amount, the amount that he got from
7 them which the Court can use as the fraud amount for
8 calculating guidelines, is well over 400,000. I'd ask the
9 Court to use that figure.

10 THE DEFENDANT: Your Honor, it's my understanding and,
11 obviously, I'm not as knowledgeable that to the purpose of the
12 sentencing guidelines, Mr. Ely could maybe clarify, that loss
13 amount not restitution amount is what is used.

14 THE COURT: Well, I'm going to use the loss amount and
15 I'm going to then say we're in the range of 200,000 to \$400,000
16 loss which then creates a advisory guideline range of 30 to 37
17 months. Is that correct, Mr. Ely?

18 MR. ELY: Yes, Your Honor.

19 THE COURT: Okay. And that then --

20 THE DEFENDANT: Your Honor?

21 THE COURT: Yes.

22 THE DEFENDANT: The victim number would not change
23 then or influence it, right? Because the range is incon -- it
24 doesn't change the base -- the level amount, correct, Mr. Ely?

25 MR. ELY: The victim range is 10 to 50 victims, so I

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1 don't think that is -- that would change. It would have to be
2 below ten.

3 THE COURT: Right.

4 MR. ELY: In order for that to affect the guidelines.

5 THE COURT: So we're dealing with an advisory
6 guideline range of 30 to 37 months. Are there any other
7 guideline matters that you wish -- and a restitution amount of
8 \$363,000.

9 THE DEFENDANT: Your Honor, I have yet to be provided
10 with the loss list that the government did, so even for the
11 interest of alleged victims, only people that are owed money
12 should be on the list because the working list I had had
13 several individuals who either were not -- for example, the
14 government in November claimed Mike and Grace Naseef were owed
15 \$20,000.

16 THE COURT: You're going to have to spell the last
17 name.

18 THE DEFENDANT: Naseef, N, as in November, A-S-E-E-F.

19 MS. OBERG: Maybe I can short-circuit this.

20 THE DEFENDANT: Okay. Yeah.

21 MS. OBERG: Do you have the sentencing memo that I
22 filed?

23 THE DEFENDANT: I have your sentencing memo without
24 attachments, ma'am.

25 THE COURT: Okay. Then let me -- do you have, if

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1 not -- well, I got writing on it.

2 MS. OBERG: Well, I don't know why that would be.

3 THE COURT: Huh?

4 MS. OBERG: I don't know why that would be.

5 THE COURT: Do you have a copy of the government's --
6 I don't either. But we can get a copy of it. Do you have a
7 copy of it, Mr. Ely?

8 MR. ELY: I do not have an extra copy, Your Honor.

9 MS. OBERG: I'll give him the copy that I have, Your
10 Honor.

11 THE COURT: Okay. And then, Mrs. Tofil, can you go
12 and make a couple copies of that?

13 THE DEFENDANT: Okay. But Your Honor --

14 THE COURT: You all have a seat for a minute while we
15 get copies for everybody and then we'll all be on the same
16 page.

17 THE DEFENDANT: Thank you, Your Honor.

18 (Short pause.)

19 MS. OBERG: Your Honor, if that's the case --

20 THE COURT: Wait till Ms. Tofil gets back.

21 MS. OBERG: But I wonder if he doesn't have the other
22 attachment either.

23 THE COURT: Okay. That's a good question.

24 THE DEFENDANT: I have --

25 THE COURT: The victim impact statements by various

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1 individuals?

2 THE DEFENDANT: I'm missing one, Anthony Benedosso,
3 Jr., but I have the rest, Your Honor.

4 MS. OBERG: Should I take these to Ms. Tofil?

5 THE COURT: Yeah. Why don't you go back in there
6 and -- so thank you for raising that, Ms. Oberg.

7 MS. OBERG: Sure.

8 (Short pause.)

9 THE DEFENDANT: Thank you, Your Honor.

10 THE COURT: Sure.

11 THE DEFENDANT: If the Court's going to have a
12 subsequent restitution hearing, a lot of my concerns with this
13 list could be raised then, but if it's in the interest of
14 sentencing that my questions -- my objections be made now, I
15 can make them now.

16 THE COURT: Okay. I believe that we've established
17 the loss of amount. You're speaking about the restitution
18 amount, correct?

19 THE DEFENDANT: Pardon?

20 THE COURT: We've established the loss amount. You're
21 dealing with the restitution amount.

22 THE DEFENDANT: Well, even on this loss amount there's
23 still further inaccuracies, Your Honor, of what people are owed
24 and so --

25 THE COURT: Okay. Then let's divorce that from the

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1 restitution.

2 THE DEFENDANT: Okay.

3 THE COURT: In other words, we're dealing with a loss
4 amount in the guidelines and maybe we can have a restitution
5 hearing in a couple weeks.

6 THE DEFENDANT: As my objections on this, Your Honor,
7 don't change the guidelines --

8 THE COURT: Right.

9 THE DEFENDANT: -- should I still make my objections
10 known?

11 THE COURT: No, you can do that --

12 THE DEFENDANT: At restitution.

13 THE COURT: -- with regard to restitution at the
14 restitution hearing. We'll schedule it down the road.

15 THE DEFENDANT: Thank you, Your Honor. And then can I
16 move on to the issues I have with the government sentencing
17 memo?

18 THE COURT: Yes.

19 THE DEFENDANT: Okay. I'll just do a page-by-page
20 work-through, if that works for the Court, and make my
21 objections known.

22 Obviously, on the first page of the government's --

23 THE COURT: Oh, you're speaking too fast.

24 THE DEFENDANT: Oh, I'm sorry. I'll talk slower for
25 the Court.

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1 THE COURT: Very good.

2 THE DEFENDANT: Obviously, the range of 37 to 46
3 months, as we established, is now lower.

4 THE COURT: Correct.

5 THE DEFENDANT: I am kind of -- I object to these
6 unstan -- overall with the government's memo I must admit
7 I'm -- there seems to be no evidence, a lot of hearsay and
8 baseless prejudicial allegations that the government inserted
9 as fact. For example, these allegations --

10 THE COURT: Well, it's not fact. It's their position.
11 So it's like their argument and your argument.

12 THE DEFENDANT: Okay.

13 THE COURT: Yeah.

14 THE DEFENDANT: I mean, just the allegations of
15 gambling away, on the second page, Your Honor, the -- a
16 recurring allegation here is that I use this money to travel
17 the world and then the government then says between 2005 and
18 2012 Partyka and his then fiancée, Angela Naseef, traveled the
19 world.

20 THE COURT: Too fast. Slowly.

21 THE DEFENDANT: My apologies, Your Honor. I didn't
22 know my fiancée until 2008, and prior to this incident well
23 before any range of alleged criminal activity, I traveled the
24 world extensively to approximately 85 countries prior to 2008
25 which I believe the government agreed is well before any

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1 criminal activity. So I'm troubled that the government is just
2 throwing out dates that -- for influencing Your Honor to make
3 the alleged criminal activity seem more far stretched than it
4 is, so I just object on the premise of that.

5 THE COURT: I will assume for purposes of sentencing
6 that you met Miss Naseef in 2008. I'll also use the microphone
7 to help Ms. Lizza and the people in the court.

8 THE DEFENDANT: And also the range of alleged criminal
9 activity has been from 2009 to 2012, 2005 to 2012. I think
10 undeniably, I can agree that it's 2010, 2012, if the government
11 has no objection to that.

12 MS. OBERG: I do object. I think --

13 THE COURT: Go ahead.

14 MS. OBERG: The indictment -- well, I'll go with the
15 figures in the indictment, January, 2009, to February, 2013.

16 THE DEFENDANT: Your Honor, the company they say I
17 used, Rosebud Capital Management --

18 THE COURT: Wait. You're speaking too fast. Rosebud
19 Capital Management.

20 THE DEFENDANT: -- Capital Management, Your Honor, was
21 incorporated in August of 2009 and no funds were involved in
22 this case until February of 2010.

23 THE COURT: Okay. This is not of significance with
24 regard to sentencing.

25 THE DEFENDANT: I would just like to -- just for your

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1 benefit, Your Honor.

2 THE COURT: Okay.

3 THE DEFENDANT: On the third page of the government's
4 sentencing memorandum, they say that "Several of the letters
5 indicate a belief that if FBI had not intervened and stopped
6 Partyka in the fall of 2012, he would still be taking money
7 from new victims, gambling it away and taking lavish trips
8 around the world." My objection to this is that it's purely
9 speculation, and prior to the government's involvement I had
10 repaid almost 20 percent, or well over \$100,000, to individuals
11 without soliciting further investment, i.e., a Ponzi scheme.
12 So people might not have been happy with repayment terms or
13 times, but repayment was occurring, nonetheless, and
14 substantially so.

15 On page 4 of the government's sentencing memorandum --

16 THE COURT: Again, slower, please.

17 THE DEFENDANT: Yes, sir. On page 4, Your Honor, the
18 Court -- I mean the government argues that my scheme required
19 me to set up shell corporations and ult --

20 THE COURT: Really. Let me just put it this way. You
21 either slow down or sit down. You have a right to allocute,
22 but you don't have a right to be disrespectful and -- to the
23 court reporter.

24 THE DEFENDANT: I apologize.

25 THE COURT: She has to take down every word. So this

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1 is the fourth time I've mentioned it. You'll either slow down
2 or you'll sit down.

3 THE DEFENDANT: I'm sorry, Your Honor.

4 The government alleges that I set up shell
5 corporations and opened multiple bank accounts to cultivate an
6 ever-expanding group of potential victims. I'm unaware of any
7 shell corporations I've opened, Your Honor, besides the Rosebud
8 Capital Management that I do not dispute was in existence. And
9 in terms of multiple bank accounts, I only had two bank
10 accounts with Bank of America. So I just feel that's
11 exaggerative and I would like to make that known.

12 MS. OBERG: Does the Court wish response on that?

13 THE COURT: No. I'll give you an opportunity when
14 he's done.

15 MS. OBERG: Thank you.

16 THE COURT: You got a legal pad? If not, we have
17 extras up here.

18 MS. OBERG: I'm good. Thanks.

19 THE COURT: Okay.

20 THE DEFENDANT: On page 5, Your Honor, of the
21 sentencing memo, the government keeps throwing out an
22 allegation that I showed the victim investors a copy of what
23 appeared to be a \$10 million check payable to Rosebud Capital
24 Management. This never occurred. I'm unaware of -- I mean,
25 it's almost another serious allegation that I'm forging a

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1 check, and there's no evidence, Your Honor, that anybody would
2 have, even if this did happen, relied on that to make an
3 investment.

4 I have issue, Your Honor, with many of the claims of
5 the victim impact statements, not their passion but just
6 factual objections. For example, on page 9 of the government's
7 sentencing memorandum, the government says that Lisa Mascall,
8 M-A-S-C-A-L-L, liquidated her \$10,000 IRA and withdrew another
9 \$5,000 from her savings account and lost it all to Andrew
10 Partyka's fraud. The only problem, Your Honor, as I
11 highlighted in my memo, is that Miss Mascall was paid back in
12 full, 100 cents on the dollar, and then further received \$2,000
13 trans-Atlantic business class air fare. So I feel like an
14 omission like that is just troubling but also that the
15 government didn't take the time to check the veracity of many
16 of these sentencing victim impact statements that people made.

17 And I'm unaware how some of these individuals are
18 better informed of my finances than others. Am I able to make
19 objections to victim impact statements?

20 THE COURT: Yeah. You're allowed to speak with regard
21 to that, sure.

22 THE DEFENDANT: Thank you.

23 May I just have one second to organize my papers?

24 THE COURT: Yeah.

25 (Short pause.)

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1 THE COURT: Again, slower.

2 THE DEFENDANT: Sorry, Your Honor, I'm nervous. I
3 apologize.

4 THE COURT: I know. I understand.

5 THE DEFENDANT: I want to get this over.

6 THE COURT: We'll get done slower and appropriately.

7 THE DEFENDANT: So as I just mentioned, Your Honor, I
8 object to Lisa Mascall's victim impact statement, not her right
9 to make it but just the factual basis, and she omitted full
10 repayment and then subsequent benefit.

11 I guess this may -- the Court may correct me if this
12 goes into a restitution hearing, but a lot of individuals, as
13 most frauds are obviously messy or sloppy in nature, I wonder
14 if I could argue that people received financial payments or
15 benefits or gifts that would change the amount of what they're
16 owed and, therefore --

17 THE COURT: We'll deal with that at restitution.

18 THE DEFENDANT: Okay.

19 THE COURT: We have a calculated guideline figure.

20 THE DEFENDANT: Okay. Thank you, Your Honor.

21 THE COURT: So we're okay with that and we'll deal
22 with individual restitution matters.

23 THE DEFENDANT: Okay. Thank you. I just didn't know.

24 THE COURT: Okay.

25 THE DEFENDANT: My next victim impact statement would

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1 be Michael Benedosso, B-E-N-E-D-O-S-S-O.

2 THE COURT: Thank you.

3 THE DEFENDANT: Mr. Michael Benedosso also failed to
4 mention that he had received 72.66 percent of his money back
5 which is \$14,532. The government has him listed as \$10,000
6 invested and fifty-four sixty eight zero. He had made a loan
7 to me also of \$10,000 that wasn't included on this, but that
8 was repaid in full, so I just feel like what is lost on some
9 people is that repayment was underway and has since been frozen
10 as a result of this.

11 My next objection is just highlighting for Anthony
12 Benedosso, Jr., B-E-N-E-D-O-S-S-O. I'll get into remorse and
13 things like that when I close out, but just again,
14 Mr. Benedosso was the largest individual involved and he
15 received 17 and a half percent back and had \$15,160 repaid.
16 Again, it just shows the pattern that my intention was to
17 repay, and obviously things were frozen because of the ongoing
18 criminal --

19 THE COURT: Because of -- oh, a little louder.

20 THE DEFENDANT: Yes, Your Honor.

21 My next victim impact statement is Krista Greene,
22 K-R-I-S-T-A G-R-E-E-N-E. My only objection is that I never
23 discussed any kind of investment with Ms. Greene. She was
24 engaged to or in relationship with Anthony Benedosso, Jr., whom
25 I just mentioned. And as far as I'm aware, Mr. Benedosso took

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1 it upon himself to wire funds from her account to mine. It
2 doesn't change -- I'm not arguing against the loss amount, but
3 I'm just -- it says that I preyed on her emotionally vulnerable
4 state upon her learning that she was pregnant, stuff that I
5 wasn't truly aware of, and I just object to that because it
6 makes me come off as quite predatory when it was -- I'm not
7 disputing that I owe Miss Greene money but, rather, the
8 predatory --

9 THE COURT: The situation.

10 THE DEFENDANT: The situation.

11 My next victim impact statement I object to just for
12 the record is Ms. Jill Barry, B-A-R-R-Y. Again, it wouldn't
13 trouble me if the government didn't put in her sentencing
14 memorandum but they quoted her as, quote, "Andrew and Angela
15 spent a lot of money on elegant gifts" --

16 THE COURT: That was Andrew and Angela?

17 THE DEFENDANT: Yes, Your Honor, my wife.

18 -- "including her engagement ring, as well as visiting over
19 200 countries in the two years they were dating."

20 Traveling to 200 countries, obviously I would be in
21 the Guinness Book of World Records, but, again, also the
22 allegation that I'm buying lavish jewelry is unfounded. I
23 could prove to the Court that I had sold jewelry I inherited
24 from my mother to pay for my wife's engagement ring, and it's
25 just unsubstantiated exaggerated thing that the government

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1 would even quote such an obviously false quote in their
2 sentencing memo. Troubles me.

3 As I mentioned in my memorandum, I just expect to be
4 sentenced fairly, proportionally and on the facts, Your Honor.
5 And the exaggerative stuff, I just -- I don't -- I mean this
6 fraud was so bad and horrible, and obviously I regret my
7 involvement. I feel like there should be plenty for the
8 government factually to attack me on here instead of gross
9 exaggerations like visiting 200 countries in two years.

10 My next victim impact statement would be Anthony
11 Benedosso, same spelling, B-E-N-E-D-O-S-S-O, Sr. Again, the
12 government quoted his speculation that had the FBI not
13 intervened and acted when it did, I would still be attempting
14 to deceive and cheat potential victims or that I never
15 expressed remorse. I obviously haven't yet had the opportunity
16 to express remorse. But Mr. Benedosso paints the picture that
17 his son, Anthony, my friend at the time, left law school
18 because of this. I have conversations even where Mr. Benedosso
19 said that was not the issue, that he just felt he didn't want
20 to be a lawyer, and plus he also had -- was faced with
21 unexpected parenthood. I mean, it doesn't change what
22 happened, but I just feel that, again, it paints a negative
23 picture that's not quite true to the facts.

24 My further objections would just be for the
25 restitution hearing, Your Honor, just amounts owed. And will I

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1 have another chance then, will I --

2 THE COURT: Yeah. I'll let you do, as you said, your
3 closing allocution with regard to culpability and remorse --

4 THE DEFENDANT: Okay.

5 THE COURT: -- after Miss Oberg responds to your
6 statements.

7 THE DEFENDANT: Thank you, Your Honor.

8 THE COURT: Sure.

9 MS. OBERG: Thank you, Your Honor.

10 I don't know exactly where to start here. First, I'd
11 like to say that Mr. Partyka has shown himself to be a person
12 who does lie after lie after lie. We have no reason to believe
13 a word he says, and compared to what the victims had to say, a
14 lot of which was substantiated by bank records, we took the
15 victims at their word, and if they were able to be here, they
16 would testify for the Court that what they gave -- what they
17 indicated was correct.

18 There was -- and I do want to address what Mr. Partyka
19 had to say, I think I'll use the podium, regarding Angela
20 Naseef.

21 THE COURT: Actually pull it towards you because that
22 will help. That's the purpose of the mic.

23 MS. OBERG: Okay.

24 THE COURT: Ms. Lizza keeps reminding me as I go
25 further from it to use it, and so I appreciate if you use it

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1 too.

2 MS. OBERG: Mr. Partyka originally came to the FBI in
3 Troy voluntarily upon request and gave -- began to give a
4 statement to FBI agents Christine Taylor and Dan Troccoli.

5 THE COURT: Spell Troccoli, please.

6 MS. OBERG: T-R-O-C-C-O-L-I.

7 THE COURT: Thank you.

8 MS. OBERG: And when he ended the interview, he left
9 voluntarily. He realized that the -- I think that the FBI knew
10 more than he thought they knew and that they were not going to
11 be fooled by misrepresentations, and he just ended the
12 interview, which is his perfect right.

13 After that I began to get e-mails from Mr. Partyka,
14 which I've copies of if the Court would like them. I've given
15 them --

16 THE COURT: You have them. You can just take the
17 parts that you want from them to talk about and...

18 MS. OBERG: And basically Mr. Partyka was, in my
19 opinion, doing a lot of stalling, "I'm getting a lawyer, I'm
20 thinking about getting a lawyer, I've hired a lawyer." Anyway,
21 we decided to charge him in a complaint and get him a lawyer,
22 and he had Andrew Wise initially. He replaced Mr. Wise with
23 Mr. Eric Nemeth. He retained Mr. Nemeth and eventually let
24 Mr. Nemeth go and began to e-mail me again that he was going to
25 hire Steve Fishman, which eventually he did.

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1 At -- prior to indictment we decided that Ms. Angela
2 Naseef, who was not married at that time, was probably duped,
3 was probably used by Mr. Partyka to insulate himself from his
4 fraud and used her to negotiate checks, used her bank accounts
5 to negotiate checks. So I subpoenaed her as a witness, not a
6 subject, and Mr. Partyka's correct, she was not a subject at
7 that time. Before she --

8 THE COURT: You mean a target?

9 MS. OBERG: Or a target, correct.

10 Before she was due to appear, I got a -- an e-mail
11 from Mr. Partyka on February 5th, 2013: "Ms. Oberg,
12 Miss Naseef currently has a subpoena to testify before the
13 grand jury on Tuesday, February 12th, 2013; however, after
14 nearly five years together we were married on Tuesday,
15 January 29th. Therefore, she will not be attending due to her
16 spousal privileges codified under Rule 501. I'm in the process
17 of retaining Steven Fishman to handle my matter going forward.
18 Once he and I have handled our loose ends, he will contact you
19 to inform you of such. In the meantime, I remain available to
20 you if need be. Regards, Andrew Partyka."

21 Based upon Miss Naseef's marriage and Mr. Partyka's
22 declination to waive marital privilege, based upon records,
23 we've decided she's a conspirator, she's not duped as much as
24 we thought. And if the Court will recall the initial
25 indictment that was returned in March 28th, 2013, we laid out

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1 for the grand jury all of Ms. Naseef's participation. She was
2 an incorporator in Rosebud Capital. They opened accounts at
3 Bank of America with them as signatories in the name of Rosebud
4 Capital. They had a business economy checking account. They
5 were both signatories on that account. They had a business
6 interest maximizer account. Mr. Partyka was the only signatory
7 on that account. He was listed as president of Rosebud on the
8 opening documents. They did have multiple bank accounts.
9 Angela Naseef also established a Bank of America checking
10 account, and the conspirators -- we believed they were
11 conspirators at that time -- used that account in furtherance
12 of their scheme.

13 They solicited funds from her family, her friends,
14 from his family, his friends and their acquaintances, and based
15 on that we believed Ms. Naseef was a participant in the crime,
16 and the original indictment indicates further that Angela
17 Naseef drafted checks on occasion payable to the victim
18 investors on a Bank America account that were sent to the
19 victims, and the checks bounced or they were NSF and on and on
20 and on. So she did have an active role in the scheme, but
21 after she was indicted, she had retained counsel whose name
22 escapes me at the moment, but in any event --

23 THE COURT: Szydlak.

24 THE DEFENDANT: Yes, Pamella Szydlak.

25 THE COURT: Szydlak. Is it S-Y-D-L-A-K?

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1 MS. OBERG: I believe that's right. S-Z-Y-D, I think.

2 But in any event, they came in with a *Kastigar* letter,
3 and Miss Taylor and --

4 THE COURT: K-A-S-T-I-G-A-R. Okay.

5 MS. OBERG: We interviewed Miss Naseef who we decided
6 after that candid interview was, in fact, duped by Andrew
7 Partyka, was used by him. And at that point I knew there
8 wasn't a conspiracy. And when Mr. Fishman indicated
9 Mr. Partyka was interested in a plea offer, I drafted an
10 information charging him, rather than with conspiracy, with
11 Count 1 of -- one count of mail fraud.

12 So I just wanted to lay that out for the Court to
13 allay any concerns the Court might have that were raised by
14 Mr. Partyka in his memorandum.

15 In addition, his e-mails, if the Court wishes to see
16 them, he indicates in his memorandum that he continued to make
17 offers to plead guilty, he made offers to me, I called him
18 arrogant. Never made an offer to me to plead guilty, and I
19 never called him arrogant. I don't know who told him that.

20 His only e-mails to me are delay, delay, delay, I'll
21 get a new lawyer, I'll do this, I'll do that. That's all they
22 are. I gave them to Mr. Fishman, and I'm happy to give them to
23 the Court.

24 We never prevented him from paying restitution. We
25 never insisted that he plead guilty before we would dismiss the

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1 charges against his wife. In fact, the Court will recall that
2 at the first hearing we had I moved to dismiss the indictment
3 as to Miss Naseef. And the Court asked, "Should we wait till
4 Mr. Partyka is sentenced?" I said, "No, Your Honor, I think
5 the circumstances require it to be dismissed now," because we
6 no longer believed that she had culpability.

7 He has been given full discovery, or at least
8 Mr. Fishman was, all the witness 302s, all the bank records
9 that support the allegations that the victims made about
10 bounced checks, about them giving contributions or thinking
11 they were making investments. He held himself out to them as a
12 person who was a very successful investor. He told them that
13 he had gone to Georgetown, got bored there because it was too
14 easy for him, went to Harvard, met Mark Zuckerberg, they became
15 friends, he helped Mr. Zuckerberg incorporate Facebook, he's a
16 6 percent owner of Facebook and on and on and on, all of which
17 were lies.

18 Mr. Partyka never graduated from high school, which he
19 admitted to the FBI in his initial interview, which he denied
20 to probation. They were unable to find that he had graduated
21 from the military academy he said he did, and now in his
22 memorandum he's saying, once again, that he did graduate from
23 there and is an educated person.

24 Clearly, he's a bright man, no question about that.
25 But he is unable to tell the truth and happy to take people's

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1 money under false pretenses.

2 I think that the victims' statements speak very well
3 of what actually happened in this case. They are eloquent.
4 They have the ring of truth. And they indicate that
5 Mr. Partyka totally lied to them, took their money, made
6 promises to them. By the way, the list of places that my memo
7 says that the two, Partyka and Naseef went, was given by
8 Miss Naseef to Pretrial Services. That's not a list that
9 materialized out of the air.

10 He says he has, on page 7 of his memorandum, he has no
11 intent to ever commit a crime. A lie after a lie after a lie,
12 taking money from everybody who's willing to give it to him,
13 false pretenses. Anthony Benedosso, Jr., said that he
14 showed -- Mr. Partyka showed him a xerox copy of a check
15 purportedly from the Meijer family company, Meijer store
16 family, for \$10 million that he had used to invest, and that
17 was completely untrue. He never had a penny from the Meijer
18 store family that we found in any accounts.

19 In his statement here he says that when his mother
20 passed away, he inherited a million dollars which he gave away
21 in full to charity. If that's correct, he should have used it
22 for restitution to these victims. I don't believe it for a
23 minute.

24 Pretrial Services -- the probation report says that
25 his mother had filed charges against him for beating her and

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1 eventually they were dismissed because she withdraw her
2 complaint. But he says in his memo, "No, she was trying to
3 commit suicide and I had to get rough with her to stop her."
4 Those are lies, Your Honor.

5 I can go on. I don't know that I need to. I could
6 refute every statement that he's made in his sentencing
7 memorandum. But I submit to the Court that this sentencing
8 memorandum and Mr. Partyka's statements here today indicate to
9 me that he has lied to the Court, lied to the probation
10 department, misrepresented his background, his intention.
11 Saying that the government prevented him from paying
12 restitution is widely untrue. We never had any discussions
13 about that. We'd have been thrilled if he had paid
14 restitution, and I'm sure the Court would have taken that into
15 account if he had.

16 But I think that in light of that, the Court may wish
17 to consider not giving him acceptance of responsibility credits
18 which the Court could do under the Rule 11 plea agreement.
19 Page 5 of the plea agreement says "If the Court finds," and it
20 goes on to the next page, "that the offense level should be
21 higher because after pleading guilty, Defendant made any false
22 statement to or withheld information from his probation
23 officer, otherwise demonstrated a lack of acceptance of
24 responsibility for his offenses or obstructed justice or
25 committed any crime, and if such finding results in a guideline

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1 range higher than is recommended by the parties, then the
2 higher guideline range becomes each party's recommended
3 guideline range."

4 I know the Court has gone down two levels because
5 of -- by taking the restitution amount rather than the fraud
6 amount, which I understand, but I suggest that the Court can go
7 back up three levels and take away acceptance of
8 responsibility. Yes, he pled and saved the government the
9 expense of a trial, but he was not registered with the SEC
10 which he represented he was, taking people's money without any
11 authority whatsoever, using it for whatever purposes he decided
12 were appropriate, lulling them with e-mails claiming the
13 government was keeping him from fulfilling his promises to
14 them. And I hope that the Court gives Mr. Partyka all the time
15 that you can.

16 Unless the Court has questions.

17 THE COURT: Nope.

18 MS. OBERG: Thank you.

19 THE COURT: Mr. Partyka, if you want to allocute.

20 MS. OBERG: Sorry. I left my pen.

21 THE DEFENDANT: Your Honor, do I have the ability to
22 respond at all to some of these allegations the government just
23 said --

24 THE COURT: Yeah.

25 THE DEFENDANT: -- are a little troubling and not --

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1 they're arguing for a sentencing enhancement, so am I able to
2 respond?

3 THE COURT: Sure.

4 THE DEFENDANT: This is the list, Your Honor, that was
5 just produced by the government. All these people highlighted
6 in yellow -- I'm not aware if your vision is that great.

7 THE COURT: I can see. I just look old.

8 THE DEFENDANT: -- are not owed money or what -- or
9 the amount is inaccurate.

10 So if the government's attacking my credibility, I
11 remind the Court that they're seeking to have me imprisoned,
12 second to the loss of life, the most severe thing the U.S.
13 government can do, based off completely inaccurate amounts. So
14 the benefit of the doubt, I would assume, naturally benefits
15 me. But when the government is calling for a term of
16 imprisonment or saying I don't show remorse and this is how
17 inaccurate it is, I'm -- I think that says a lot, Your Honor.

18 The government also -- my e-mails that Miss Oberg read
19 into the record show that I was taking it seriously. I did not
20 want her to think that I was ignoring the government or trying
21 to delay. I have not tried to delay this at all. It's gone on
22 for 16 months. As you know, criminal cases take awhile.
23 Delay, I've gained 80 pounds. It's not been fun. It's been
24 extremely stressful. My e-mails to her were simply to show
25 that I was taking this matter seriously.

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1 Also, as I've mentioned in my sentencing memorandum, I
2 at the time thought logic would prevail, and what attorneys
3 were asking for retainers rivaled the amounts of the alleged
4 fraud. And I was trying to prevent spending unnecessary
5 amounts in legal bills, and that's what those e-mails reflect,
6 is the debate I was having, versus, you know, repayment or
7 restitution.

8 The government also says that I had no -- they didn't
9 prevent me from making restitution, which is true, but how do I
10 make restitution, Your Honor, when the amounts still aren't
11 agreed to, are vastly wrong? And if not even for me, it's
12 unfair to the people who are truthfully owed money when other
13 people, like Mike and Grace Naseef, N-A-S-E-E-F, were on the
14 list for \$20,000 owed when it wasn't even \$20,000 of a
15 transaction ever?

16 It's not I'm arguing with the government of \$50 or
17 \$100. We're arguing about financial transactions that never
18 occurred. So either the government has, you know, the --
19 investigation's part of the FBI's name, but it appears that
20 they didn't check the veracity of any of these things, and that
21 to me is a severe credibility issue because they're trying to
22 have me imprisoned based off of that.

23 Also, I, on advice of counsel, you know, returning
24 vast sums of money in the middle of a criminal investigation, I
25 could easily be sitting before Your Honor here today charged

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1 with obstruction or something else, it was -- without Court
2 supervision it would be, in essence, reckless for me to make
3 any restitution attempts, not to mention the fact that amounts
4 haven't been involved. If that's the government's argument, I
5 would ask them to call me on my bluff, delay sentencing, come
6 up with an amount today while we're all here and give me an
7 opportunity to make restitution.

8 Again, based off of no fact, the government takes
9 issue with the sentencing -- my sentencing memorandum.
10 Everything I put in this, Your Honor, is easily verifiable and
11 I could easily chop away the credibility of the government with
12 people who are just in the courtroom today.

13 But this thing with my mother, besides being
14 irrelevant, Miss Oberg was not there, it only occurred between
15 my mother and I. A family friend is in the court today who's
16 known my mother since, obviously, before I was born. My mother
17 died two months after that incident and I did inherit a million
18 dollars. The false option of -- from her estate, that I could
19 use it towards restitution. Well, my mother died in 2007,
20 seven years ago this month. So that's kind of an unnecessary
21 jab. But even for the government to speak that they would be
22 aware of the factual proceedings of that incident that occurred
23 between my mother and I is completely just unnecessary personal
24 jab, and I feel that the government has made this personal and
25 is not acting in the best interest of all involved.

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1 I've accepted responsibility, Your Honor. I -- I'm
2 here before you. I'm trying to do what's right. I can easily
3 prove that the amount of the alleged fraud, presumably under
4 \$400,000, I've spent 80 percent of that on legal bills today.
5 The indictment of my wife cost a substantial sum of money. The
6 government simply, Your Honor, is not acting in a way that
7 benefits anyone. And if I need to be punished, that's fine.
8 I'm young. I'm not going anywhere. But it's a false option if
9 I -- when there's no amounts and no accurate list of people
10 involved, at this stage in the game, Your Honor, after 16
11 months it's disingenuous. If the government wants to call
12 their bluff, that's fine. I welcome it. But Mr. Gregory
13 Kosmatka --

14 THE COURT: Who?

15 THE DEFENDANT: Gregory Kosmatka, K-O-S-M-A-T-K-A.

16 THE COURT: Thank you.

17 THE DEFENDANT: -- could immediately just refute the
18 state of my mother. I'm taking that personally because for a
19 federal prosecutor to argue that what occurred between two
20 people seven years ago is just unnecessary. It's not a lie.
21 He could vouch under oath right now that my mother had lost
22 business, everything --

23 THE COURT: I'm not going to take that into
24 consideration --

25 THE DEFENDANT: All right. I'm just --

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1 THE COURT: -- at sentencing.

2 THE DEFENDANT: You know, the bar is extremely high,
3 Your Honor. The Bill of Rights, most of them deal with the
4 rights of the accused in this country, and that the government
5 literally at the sentencing hearing is wasting time on this is
6 troubling. And if I could just read a quote from Miss Oberg's
7 boss, high up the chain, the Deputy Attorney General of the
8 United States --

9 THE COURT: Mr. Cole?

10 THE DEFENDANT: Mr. Cole. I think it's extremely
11 relevant to this case.

12 THE COURT: Slowly.

13 THE DEFENDANT: Yes, sir. He said, quote --

14 THE COURT: Slowly.

15 THE DEFENDANT: Yes, sir. "In a criminal case, I have
16 to prove not only that you made a false statement" --

17 THE COURT: Wait. See, you got to slow down or you're
18 going to sit down. You have a right, but you can't abuse the
19 court reporter.

20 THE DEFENDANT: I apologize.

21 THE COURT: Okay. "In a criminal case."

22 THE DEFENDANT: "In a criminal case I have to prove
23 not only that you made a false statement but that you intended
24 to commit a crime and also that the other side of the
25 transaction relied on what you were saying. And, frankly, in

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1 reality you had very sophisticated counter parties on both
2 sides." This was in reference to a lack of prosecutions from
3 the financial frauds of Wall Street. "And so even when one
4 side may have said something was dark blue, when really we can
5 say it was sky blue, the other side of the transaction, the
6 other sophisticated party, wasn't relying at all on the
7 description of the color."

8 And the government -- and the relevance of this is the
9 government is not proving that these exaggerations and lies,
10 anybody resulted in it. They keep bringing up, out of this
11 whole fraud, this \$10 million check from Meijer. Well, if I
12 sent a xerox copy, don't you think the individual would have
13 saved it because it would have been noteworthy or it would have
14 been able to be produced?

15 THE COURT: Slow down. Last warning, slow down or
16 you're going to sit down.

17 THE DEFENDANT: I apologize.

18 THE COURT: Okay. Let's get -- I'm not going to
19 consider that --

20 THE DEFENDANT: Okay. Your Honor. So just attack on
21 the credibility of that. I appreciate that.

22 If I could allocute for my final --

23 THE COURT: Okay. Slowly.

24 THE DEFENDANT: Yes, Your Honor.

25 I didn't write prepared remarks for that, but I am

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1 sorry for my involvement. Most of these individuals were all
2 friends or someone I knew; therefore, you know, I would never
3 deliberately hurt anyone. Almost everyone can attest that I
4 always said, you know, I wouldn't take an amount of money I
5 couldn't make right. I can argue, but that's not what I'm
6 trying to do, that this was not deemed traditional investments
7 for most people. Alleged victims contacted family members of
8 mine, harassed my wife at work. I don't know many people who
9 call their stockbroker's wives or sisters or uninvolved
10 parties. The reason so many people for such a small amount are
11 involved in this matter is because I only took from people what
12 I could make right.

13 If -- I just ask the Court to consider that if the
14 government, minutes before sentencing, can't even produce an
15 accurate list or -- of people involved, that they haven't even
16 attacked motive or what I was actually doing. I have a family
17 and friends who I could have taken a million dollars from and
18 the sentencing guidelines would have benefitted me, as opposed
19 to countless individuals for smaller sums of money. I would
20 love an opportunity to make things right. I am truly sorry. I
21 accept responsibility.

22 In terms of a punishment, I argued, I think, that, you
23 know, if a company like Chase can get deferred prosecution, it
24 should be eligible here. While I don't think the Court will
25 entertain that, I think a reasonable outcome for everyone would

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1 be a sentencing delay contingent on repayment provided an
2 amount can be agreed to.

3 Felony conviction for me will be onerous for the rest
4 of my life. It shuts off a lot of opportunities to me. I've
5 always been civically engaged. Losing the right to vote is a
6 big deal to me. It closes off fatherhood to me, as I can't
7 adopt a child.

8 And obviously, if I live for a natural life span, it
9 will be difficult for decades to come absent a term of
10 imprisonment. And I understand guidelines call for
11 imprisonment, but I'm at a crucial age in my life that a
12 substantial term, especially what the government is calling
13 for, would be ruinous to my marriage and damaging to my family.

14 I know that my credibility can be attacked, but I
15 believe I reasonably display some level of intelligence. And
16 if I was really intending to defraud, I don't think this is a
17 great argument, there would be a lot more zeros involved. It
18 was not my intention. It benefitted me in no way. It's
19 obviously been damaging to me, and I'm so remorseful for that.
20 I'm just troubled that I've got to have an opportunity to make
21 things right, and I've yet to -- just the facts of the case, to
22 be sentenced truthfully have not been agreed to. I just -- I
23 think this is a classic example of a case that could,
24 potentially, the Court could compel a solid outcome for and
25 then assess punishment from there.

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1 As mentioned, I can prove that I spent a vast amount
2 of legal bills that rivals the amount owed. I had access to
3 millions of dollars through family and friends, none of them
4 were, you know, involved in this and it would have been
5 beneficial if they were. I displayed, a, you know, no
6 eagerness for amassing wealth in my life. I can prove I gave
7 away my mother's estate to charity. I really didn't benefit
8 any way. I know you don't have to prove that all crime's
9 beneficial for mail fraud. But I just -- the government has
10 clearly been operating for a long time off of exaggerated
11 amounts, wrong facts, wrong people involved, probably egged on
12 by that, and if common sense had prevailed long ago, this could
13 have been resolved.

14 What Miss Oberg -- I would love to see the e-mail
15 perhaps, but I had mentioned an e-mail January of last year
16 that any amount in question would be quickly rivaled to legal
17 bills, that if she would work out a plea with me, I would
18 retain an attorney for the sole purpose of a plea bargain. I
19 believe I could produce that e-mail saying that.

20 MS. OBERG: I have the e-mails right here.

21 THE DEFENDANT: May I please have just a second to --

22 THE COURT: Sure.

23 (Short pause.)

24 THE DEFENDANT: I don't see it in this e-mail. That
25 doesn't mean it doesn't exist, but I'll withdraw the argument.

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1 THE COURT: Okay.

2 THE DEFENDANT: But my intention was --

3 THE COURT: Loud and slow.

4 THE DEFENDANT: Yep. But my intention was, Your
5 Honor, to potentially -- I believe I did mention in an e-mail
6 that I would retain a plea bargain -- an attorney who
7 specializes in plea bargains.

8 Like I said, I'm deeply sorry. I'm 28 years old.
9 This will have a disproportionate effect on the rest of my life
10 no matter what. I at the very least would love an opportunity
11 to make this right. As you could probably reasonably agree,
12 the amount of restitution is not something that is an
13 unimaginable amount that I would make in my lifetime. The
14 probation department for their presentence report cited a
15 judgment the IRS has on me that transferred from my mother to
16 me, but it proves that I made a 1,900 percent return, over a
17 million dollars trading for my mother, at the age of 17. So I
18 guess whether exaggeration -- I never even quoted that to
19 anybody. But I did well and I will do well for my life and
20 regardless, I hope, and the option of repayment is pretty
21 reasonable in this case, and I just ask that the Court take
22 that into consideration. Even given menial employment, I would
23 almost be able to make restitution.

24 This has consumed 16 months from start to finish
25 today. I'm, like I said, I'm going nowhere. I've successfully

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1 complied with pretrial. I'm not seeking to withdraw my plea.
2 Even after inadequate counsel, because the discovery that
3 Ms. Oberg cited was never given to me by Mr. Fishman --

4 THE COURT: Wait. We've gone through that.

5 THE DEFENDANT: It was never provided --

6 THE COURT: Okay. Slow.

7 THE DEFENDANT: And so that's all I ask, is for mercy.
8 I've lived a pretty good life taking care of people. There's
9 always two sides to every story. There's a lot more I could
10 argue and debate, but from victim impact statements to
11 credibility of the government. I think the government has
12 shown by quoting people who aren't even owed money as an
13 argument to imprison me that what they say should be
14 skeptically considered, if at all. The bar is high for the
15 federal government. It's troubling that they have no respect
16 for facts or what's really happened.

17 THE COURT: Right. You have stated that.

18 THE DEFENDANT: And I close on that with remorse and
19 hope that the Court can compel an outcome that's beneficial to
20 all involved --

21 THE COURT: Okay.

22 THE DEFENDANT: -- that I may be sentenced fairly.
23 Thank you, Your Honor.

24 THE COURT: You can stay there.

25 Miss Oberg, why don't you go side bar.

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1 Court has --

2 MS. OBERG: Can I just respond to one thing, Your
3 Honor?

4 THE COURT: No.

5 MS. OBERG: Thank you.

6 THE COURT: The Court has before it the sentencing of
7 Mr. Partyka. The guideline range is 30 to 37 months. It's an
8 advisory guideline range. Among the factors the Court is to
9 take into account at sentencing are the nature and
10 circumstances of the offense, and this is a serious fraud
11 offense. The history and characteristics of the Defendant. He
12 does not have any prior conviction, and I will allow the
13 acceptance of responsibility point reduction of three points
14 which, again, still creates the range of 30 to 37 months and
15 does not raise the range which would occur if I denied those
16 three points.

17 There is a need for the sentence to reflect the
18 seriousness of the offense, promote respect for the law,
19 provide just punishment, afford deterrence to criminal conduct
20 and, indeed, to protect the public from further crimes of the
21 Defendant.

22 He took money from close friends, family,
23 acquaintances. He took the money that they had. The fact that
24 they weren't real wealthy meant that he got less than some of
25 the larger fraud schemes, but that factors into lower guideline

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1 range in terms of the lesser amount of money involved in the
2 scheme. There is a need to protect the public, I believe, from
3 further crimes of this Defendant.

4 Taking these facts into consideration, and the fact
5 that this was, as most frauds, this was based on greed and not
6 being a good friend to friends, not being a good relative to
7 relatives, pursuant to the Sentencing Reform Act, 1984,
8 considering the guidelines, the factors contained in 3553(a),
9 commits the Defendant to the custody of the Bureau of Prisons
10 for 36 months. Upon release from imprisonment, Defendant shall
11 be placed on supervised release for a term of three years.
12 Further ordered special assessment of \$100 due immediately.
13 The Court waives imposition of a fine, costs of incarceration,
14 costs of supervision due to Defendant's lack of financial
15 resources. Defendant shall pay -- we'll deal with the
16 restitution in a month or so.

17 While in custody, Defendant shall participate in the
18 inmate financial responsibility program, and mandatory drug
19 testing is not required. While on supervision, he should abide
20 by the standard conditions adopted by this Court and the
21 following special conditions. There will be an outstanding
22 restitution obligation. So he should provide the probation
23 officer access to requested financial information, make monthly
24 payments. Defendant should not go to any gambling institutions
25 or computer gambling, and he's prohibited from entering

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1 casinos, horse tracks. And he should also engage in full-time
2 employment which is 40 hours of employment a week.

3 Are there any objections to the sentence just
4 pronounced that have not previously been raised, Mr. Partyka?

5 THE DEFENDANT: I was just wondering if --

6 THE COURT: I will allow to report when designated.

7 THE DEFENDANT: Okay. I mean, Court influence is
8 minimal, but instruct the BOP something east of the
9 Mississippi, north of the Mason-Dixon line?

10 THE COURT: Okay. You're obviously well aware of the
11 Court's relationship with the Bureau of Prisons. I will
12 request that, but they are in control based on security and
13 occupancy, so I will do that.

14 THE DEFENDANT: And will I have time to get my affairs
15 in order?

16 THE COURT: You will probably have a month or so.

17 THE DEFENDANT: And we'll schedule a restitution
18 hearing?

19 THE COURT: We will, yep.

20 THE DEFENDANT: And there's just no chance of being
21 able to lower this amount?

22 THE COURT: No.

23 Miss Oberg, are there any objections to the sentence
24 just pronounced that have not previously been raised?

25 MS. OBERG: No, Your Honor. Thank you.

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1 THE DEFENDANT: Thank you, Your Honor.

2 THE COURT: And I accept the Rule 11 plea agreement.

3 MS. OBERG: Thank you.

4 THE COURT CLERK: Please rise. Court is adjourned.

5 (Proceedings concluded, 10:15 a.m.)

6 - - -

7 CERTIFICATION OF REPORTER

8

9 I, Leann S. Lizza, do hereby certify that the above-entitled
10 matter was taken before me at the time and place hereinbefore
11 set forth; that the proceedings were duly recorded by me
12 stenographically and reduced to computer transcription; that
13 this is a true, full and correct transcript of my stenographic
14 notes so taken; and that I am not related to, nor of counsel to
15 either party, nor interested in the event of this cause.

16

17

18 S/Leann S. Lizza 2-13-14

19 Leann S. Lizza, CSR-3746, RPR, CRR, RMR Date

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